

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

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	:	
ARRIVAL STAR, INC.	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 04-cv-907 JNE/JGL
	:	
NISTEVO CORPORATION,	:	
HIGHJUMP SOFTWARE,	:	
FRONTIER AIRLINES,	:	
NORTHWEST AIRLINES, INC.	:	
	:	
Defendants,	:	
	-----X	

**NORTHWEST AIRLINES, INC.’S ANSWER AND COUNTERCLAIM
TO ARRIVAL STAR, INC.’S FIRST AMENDED COMPLAINT**

Northwest Airlines, Inc. (“Northwest”), by its attorneys Leonard, Street and Deinard and Ward & Olivo, answer the correspondingly numbered paragraphs of the First Amended Complaint¹ for patent infringement, filed by plaintiff, Arrival Star, Inc. (“Arrival Star”) as follows:

1. Northwest is without knowledge or information sufficient to form a belief as to the corporate status of Arrival Star and therefore denies the allegations of this paragraph.

¹. Although captioned “First Amended Complaint,” Northwest has not been served with, nor has any knowledge of, earlier versions of this document.

2. Northwest is without knowledge or information sufficient to form a belief as to the corporate status and location of Nistevo Corporation and therefore denies the allegations of this paragraph.

3. Northwest is without knowledge or information sufficient to form a belief as to the corporate status and location of Frontier Airlines, Inc. and therefore denies the allegations of this paragraph.

4. Northwest is without knowledge or information sufficient to form a belief as to the corporate status and location of HighJump Software and therefore denies the allegations of this paragraph.

5. Admits.

6. Northwest is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies same, except that Northwest acknowledges that United States Letters Patents 6,486,801; 6,510,383; 6,492,912; 6,618,668; 6,683,542; 6,700,507; and 6,714,859 are assigned to Arrival Star, Inc. on their face and United States Letters Patents 6,415,207; 6,411,891; 6,363,323; 6,317,060; 6,313,760; 6,278,936; 5,657,010; 5,623,260; and 5,400,020 are assigned to Global Research Systems, Inc. on their face; and that copies of said patents are attached to the complaint.

7. This paragraph states a legal conclusion to which no response is required.

8. This paragraph states a legal conclusion to which no response is required.

9. The first sentence of this paragraph states a legal conclusion to which no response is required. As to the second, third, and fourth sentences of this paragraph, Northwest is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies same. As to the fifth sentence of this paragraph, Northwest denies, except that Northwest admits that it is engaged in the transaction of business in Minnesota.

10. Northwest admits that it may be found in this district, but denies the remaining allegations of this paragraph.

11. Northwest is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and therefore denies same.

12. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

13. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

14. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

15. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

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47. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

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78. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

79. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

80. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

81. Admits.

82. Admits.

83. Admits.

84. Admits.

85. Admits.

86. Admits.

87. Northwest repeats and realleges its responses to paragraphs 1-86 as if set forth herein.

88. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

89. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

90. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

91. Denies.

92. Denies the allegations made with respect to Northwest. Northwest is without knowledge or information sufficient to form a belief as to the allegations made with respect to the other defendants of this paragraph and therefore denies same.

93. Denies the allegations made with respect to Northwest. Northwest is without knowledge or information sufficient to form a belief as to the allegations made with respect to the other defendants of this paragraph and therefore denies same.

94. Northwest repeats and realleges its responses to paragraphs 1-93 as if set forth herein.

95. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

96. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

97. Northwest is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies same.

98. Northwest repeats and realleges its responses to paragraphs 1-97 as if set forth herein.

99. Northwest admits that it has received written correspondence from Arrival Star with respect to at least one of the Arrival Star patents in suit. Northwest is without knowledge or

information sufficient to form a belief as to the allegations made with respect to the other defendants of this paragraph and therefore denies same.

100. Denies the allegations made with respect to Northwest. Northwest is without knowledge or information sufficient to form a belief as to the allegations made with respect to the other defendants of this paragraph and therefore denies same.

101. Denies the allegations made with respect to Northwest. Northwest is without knowledge or information sufficient to form a belief as to the allegations made with respect to the other defendants of this paragraph and therefore denies same.

102. Denies.

AFFIRMATIVE DEFENSES

First Affirmative Defense

103. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 6,363,323.

Second Affirmative Defense

104. United States Letters Patent 6,363,323 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Third Affirmative Defense

105. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 6,683,542.

Fourth Affirmative Defense

106. United States Letters Patent 6,683,542 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Fifth Affirmative Defense

107. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 6,317,060.

Sixth Affirmative Defense

108. United States Letters Patent 6,317,060 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Seventh Affirmative Defense

109. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 6,714,859.

Eighth Affirmative Defense

110. United States Letters Patent 6,714,859 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Ninth Affirmative Defense

111. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 6,411,891.

Tenth Affirmative Defense

112. United States Letters Patent 6,411,891 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Eleventh Affirmative Defense

113. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 6,486,801.

Twelfth Affirmative Defense

114. United States Letters Patent 6,486,801 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Thirteenth Affirmative Defense

115. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 6,492,912.

Fourteenth Affirmative Defense

116. United States Letters Patent 6,492,912 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Fifteenth Affirmative Defense

117. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 6,313,760.

Sixteenth Affirmative Defense

118. United States Letters Patent 6,313,760 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Seventeenth Affirmative Defense

119. Northwest has not and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of United States Letters Patent 5,623,260.

Eighteenth Affirmative Defense

120. United States Letters Patent 5,623,260 is invalid and void because it fails to comply with the requirements of the patent laws of the United States, Title 35, United States Code, including without limitation, Sections 101, 102, 103, and 112.

Nineteenth Affirmative Defense

121. During the prosecution of the applications that led to the patents in suit, the named inventors and their representatives amended the application claims and made representations to the United States Patent and Trademark Office whereby they surrendered subject matter for the purpose of overcoming the Examiner's rejection of the claims, thereby giving rise to prosecution history estoppel that excludes the accused products or services from the scope of the issued patent claims.

Twentieth Affirmative Defense

122. The Complaint fails to state a claim upon which relief may be granted.

Twenty-first Affirmative Defense

123. Arrival Star's claims for relief, injunctive or legal, are barred, in whole or part, by the doctrine of laches, waiver, unclean hands, and estoppel.

WHEREFORE, Northwest prays for relief as follows:

(a) that the Complaint against Northwest be dismissed with prejudice and that Arrival Star take nothing thereby;

(b) that this case be deemed an "exceptional case" within the meaning of 35 U.S.C. § 285;

(c) that Northwest be awarded its attorneys' fees and costs of suit; and

(d) that the Court award Northwest such other and further relief as this Court may deem just and proper.

COUNTERCLAIMS

Northwest, through its attorneys Leonard, Street and Deinard and Ward & Olivo, issues the following counterclaims against Arrival Star, and alleges upon knowledge as to their own acts and upon information and belief as to acts of others as follows:

Parties

1. Northwest Airlines, Inc. (“Northwest”) is a corporation organized and existing under the laws of the state of Minnesota, having its principal place of business at Eagan, Minnesota.

2. Upon information and belief Arrival Star, Inc. (“Arrival Star”) is a corporation organized and existing under the laws of the state of Delaware.

Jurisdiction and Venue

3. This is an action arising under the Patent Laws of the United States, Title 35 of the United States Code, and the Declaratory Judgment Act, Title 28 of the United States Code for a Declaratory Judgment of noninfringement and invalidity of United States Letters Patents 6,486,801; 6,510,383; 6,492,912; 6,618,668; 6,683,542; 6,700,507; 6,714,859; 6,415,207; 6,411,891; 6,363,323; 6,317,060; 6,313,760; 6,278,936; 5,657,010; 5,623,260; and 5,400,020 (“the ‘801; ‘383; ‘912; ‘207; ‘891; ‘323; ‘060; ‘760; ‘936; ‘010; ‘260; ‘020; ‘668; ‘542; ‘507; and ‘859 patents”).

4. Arrival Star alleges in its Complaint in this action that it is the owner of the '801; '383; '912; '207; '891; '323; '060; '760; '936; '010; '260; '020; '668; '542; '507; and '859 patents and has charged Northwest with infringement of the '801; '912; '891; '323; '060; '760; '260; '542; and '859 patents. Northwest has denied the charges of infringement and has alleged that the '801; '912; '891; '323; '060; '760; '260; '542; and '859 patents are invalid.

5. As a consequence of the foregoing, there is an actual and justiciable controversy existing between Northwest and Arrival Star with respect to which Northwest requires a declaration by this Court.

6. This Court has subject matter jurisdiction over the action based on 28 U.S.C. § 1331, 1337, 1338 and 1367, and 28 U.S.C. § 2201 and 2202.

7. This Court has personal jurisdiction over Arrival Star in that, *inter alia*, Arrival Star voluntarily filed the Complaint in this Court to which this Counterclaim is directed.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and/or 1400(b).

First Counterclaim
Declaratory Judgment of Patent Non-Infringement

9. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

10. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 6,363,323 either literally or by application of the doctrine of equivalents.

Second Counterclaim
Declaratory Judgment of Patent Non-Infringement

11. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

12. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 6,683,542 either literally or by application of the doctrine of equivalents.

Third Counterclaim
Declaratory Judgment of Patent Non-Infringement

13. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

14. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 6,317,060 either literally or by application of the doctrine of equivalents.

Fourth Counterclaim
Declaratory Judgment of Patent Non-Infringement

15. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

16. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 6,714,859 either literally or by application of the doctrine of equivalents.

Fifth Counterclaim
Declaratory Judgment of Patent Non-Infringement

17. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

18. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 6,411,891 either literally or by application of the doctrine of equivalents.

Sixth Counterclaim
Declaratory Judgment of Patent Non-Infringement

19. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

20. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 6,486,801 either literally or by application of the doctrine of equivalents.

Seventh Counterclaim
Declaratory Judgment of Patent Non-Infringement

21. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

22. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 6,492,912 either literally or by application of the doctrine of equivalents.

Eighth Counterclaim
Declaratory Judgment of Patent Non-Infringement

23. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

24. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 6,313,760 either literally or by application of the doctrine of equivalents.

Ninth Counterclaim
Declaratory Judgment of Patent Non-Infringement

25. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

26. Northwest does and has not infringed, actively induced infringement of, nor contributed to the infringement of, any valid claim of United States Letters Patent 5,623,260 either literally or by application of the doctrine of equivalents.

Tenth Counterclaim
Declaratory Judgment of Patent Non-Infringement

27. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

28. United States Letters Patent 6,363,323 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Eleventh Counterclaim
Declaratory Judgment of Patent Non-Infringement

29. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

30. United States Letters Patent 6,683,542 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Twelfth Counterclaim
Declaratory Judgment of Patent Non-Infringement

31. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

32. United States Letters Patent 6,317,060 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Thirteenth Counterclaim
Declaratory Judgment of Patent Non-Infringement

33. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

34. United States Letters Patent 6,714,859 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Fourteenth Counterclaim
Declaratory Judgment of Patent Non-Infringement

35. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

36. United States Letters Patent 6,411,891 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Fifteenth Counterclaim
Declaratory Judgment of Patent Non-Infringement

37. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

38. United States Letters Patent 6,486,801 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Sixteenth Counterclaim
Declaratory Judgment of Patent Non-Infringement

39. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

40. United States Letters Patent 6,492,912 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Seventeenth Counterclaim
Declaratory Judgment of Patent Non-Infringement

41. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

42. United States Letters Patent 6,313,760 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Eighteenth Counterclaim
Declaratory Judgment of Patent Non-Infringement

43. Northwest incorporates the averments of paragraphs 1-8 of these counterclaims as though fully set forth herein.

44. United States Letters Patent 5,623,260 is invalid for failure to comply with the conditions and requirements of the patent laws including, but not limited to, 35 U.S.C. § 101, 102, 103, and 112, and the rules and regulations and laws pertaining thereto.

Nineteenth Counterclaim
Exceptional Case

45. Northwest incorporates the averments of paragraphs 1-42 of these counterclaims as though fully set forth herein.

46. At the time Arrival Star filed its complaint, Arrival Star was aware that the accused products did not infringe the ‘801; ‘912; ‘891; ‘323; ‘060; ‘760; ‘260; ‘542; and ‘859 patents either literally or by application of the doctrine of equivalents.

47. At the time Arrival Star filed its complaint, Arrival Star was aware that the ‘801; ‘912; ‘891; ‘323; ‘060; ‘760; ‘260; ‘542; and ‘859 patents were invalid.

48. At the time Arrival Star filed its complaint, Arrival Star therefore had no reasonable basis for charging Northwest with infringement of the ‘801; ‘912; ‘891; ‘323; ‘060; ‘760; ‘260; ‘542; and ‘859 patents.

49. This case is an “exceptional case” within the meaning of U.S.C. § 285 due to, *inter alia*, the above actions of Arrival Star. As a result, Northwest is entitled to recover at least its attorneys fees and costs, and other expenses it has been forced to incur in defending this litigation, including defending against Arrival Star’s continued prosecution of this lawsuit for alleged infringement of the ‘801; ‘912; ‘891; ‘323; ‘060; ‘760; ‘260; ‘542; and ‘859 patents while knowing that the patents are not infringed and are invalid.

WHEREFORE, Northwest prays for judgment against Plaintiff as follows:

- (a) dismissing Arrival Star's Complaint in its entirety with prejudice;
- (b) declaring that Northwest does not infringe any valid claim of the '801; '912; '891; '323; '060; '760; '260; '542; and '859 patents;
- (c) declaring that the '801; '912; '891; '323; '060; '760; '260; '542; and '859 patents are invalid and void;
- (d) declaring that the '801; '912; '891; '323; '060; '760; '260; '542; and '859 patents are unenforceable;
- (e) enjoining plaintiff from threatening to enforce the '801; '912; '891; '323; '060; '760; '260; '542; and/or '859 patent(s) against Northwest or any direct or indirect customers of Northwest;
- (f) awarding Northwest all of its damages incurred due to Arrival Star's unlawful conduct and that said damages be trebled and awarded to Northwest pursuant to 15 U.S.C. § 15, along with interest, costs and attorneys' and other fees and further relief as this Court may deem just and proper;

(h) declaring that the instant lawsuit is an “exceptional case” within the meaning of 35 U.S.C. § 285, entitling Northwest to an award of its reasonable attorneys’ fees, expenses and costs in this action.

Dated: May 25, 2004

S/ Jeffrey A. Eyres
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